

## APPENDIX C - AGENCY RESPONSIBILITIES (REGULATORY FRAMEWORK)

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## 1.0 INTRODUCTION

There are a number of federal, state and local permits and approvals that are or could be required for the Ripsey Wash tailings storage facility (TSF). See **Table 1, Potential Permits, Approvals and Other Responsibilities (Consultation and Coordination) for Ray Mine Tailings Storage Facility**.

Preparation of an EIS and the actual permitting processes are related but distinctively separate. An EIS is designed to explore alternatives and discuss environmental impacts. The permitting or approval processes give individual government decision makers the authority to grant, conditionally grant, or deny individual permit applications. Permits may be granted with requirements and conditions to eliminate and/or mitigate specific adverse impacts, or to conduct monitoring, pursuant to their governing statutes, regulations and guidelines.

## 2.0 U.S. ARMY CORPS OF ENGINEERS

The Corps is serving as the lead agency in the EIS process that will support a permitting decision under Section 404 of the Clean Water Act.

The Corps is also responsible for issuance of permits under Section 404 of the Clean Water Act, which requires permits for the discharge of dredged or fill material into “waters of the United States (U.S.).” Guidelines promulgated by the U.S. Environmental Protection Agency (EPA) under Section 404(b)(1) require the Corps to select the practicable alternative that is determined to be the least environmentally damaging alternative (LEDPA). Practicability is defined in terms of the overall purpose of the proposed project (see 40 CFR §230.3(q) and §230.10(a)).

The Corps has approved a formal jurisdictional delineation for the Ripsey Wash TSF project site that determined which ephemeral washes and their tributaries are waters of the U.S. regulated by the Clean Water Act. A Section 404 permit is therefore required for discharges of dredged or fill material to these delineated waters.

The Corps must comply with Executive Orders 11990 and 11988 with respect to impacts to the nation’s wetlands and floodplains. The “no net loss” wetlands policy is outlined in an agreement between the Corps and the EPA. Asarco’s proposed project would not affect any wetlands, but impacts to waters of the U.S. must be mitigated, and the conditions related to mitigation will be included in any Section 404 permit issued to Asarco.

In reviewing Section 404 permit applications, the Corps must evaluate whether the benefits from the project outweigh the predicted environmental impacts. This is called a “public interest review”.

The Corps evaluates whether the proposal is the least environmentally damaging practicable alternative. It may be necessary to include mitigation measures that will offset unavoidable impacts to waters of the United States. These measures may include on-site and/or off-site measures to restore, establish, enhance or preserve aquatic resource functions and values. Mitigation measures for impacts to waters of the United States will become special conditions for the 404 permit, if such a permit is issued.

*Table 1, Potential Permits, Approvals, and Other Responsibilities (Coordination and Consultation) for the Ray Mine Tailings Storage Facility*

FEDERAL GOVERNMENT	Permits and Approvals	Miscellaneous Involvement and Responsibilities (Coordination and Consultation)
U.S. Army Corps of Engineers	- Section 404 Permit (Dredge & Fill)	- NEPA Compliance – Lead Agency - 404(b)(1) Compliance
Environmental Protection Agency	- None	- NEPA Compliance – Cooperating Agency - Clean Water Act – Section 404 oversight
Bureau of Land Management <sup>(1)</sup>	- Right-of-way approval for pipelines - Right-of-way approval for Arizona Trail reroute on BLM property - Mining/reclamation plan for mineral estate sale	- NEPA Compliance – Cooperating Agency
San Carlos Irrigation Project <sup>(2)</sup>	- Powerline realignment easement approval	- NEPA Compliance - Cooperating Agency
Forest Service <sup>(3)</sup>	- None	- Coordination on Arizona Trail relocation
U.S. Fish & Wildlife Service	- None	- Threatened and Endangered Species Consultation (Section 7 Consultation). This could include a Biological Opinion.
Mine Safety and Health Administration	- Mine Identification Number - Legal Identity Report and Ground Control Plan	- Miner Safety and Training Plans
STATE OF ARIZONA	Permits and Approvals	Miscellaneous Involvement and Responsibilities (Coordination and Consultation)
Department of Environment Quality	- Aquifer Protection Permit, including: ✓ Closure Financial Assurance ✓ Facility Closure Plan - Water Quality Certification (Corps 404 permit) - Industrial Stormwater Permit	- Informal consultation on NEPA work
State Mine Inspector	- Reclamation Plan and Financial Assurance	- None
Department of Water Resources	- Dam Safety Permit, if needed - Water Rights, if needed	- None
Department of Game and Fish	- None	Input related to wildlife resources
State Historic Preservation Office (SHPO)	- Cultural (SHPO) clearance	- Section 106 consultation
Department of State Lands	- State Land Sale (Ripsey Wash Area)	- Consultation with SHPO - Informal consultation on NEPA work

PINAL COUNTY	Permits and Approvals	Miscellaneous Involvement and Responsibilities (Coordination and Consultation)
Air Quality Control District	- Industrial Air Quality Permit	- Informal consultation on NEPA work
Open Space and Trails Advisory Commission	- None	- Coordination on Arizona Trail Relocation - Informal consultation on NEPA work
Public Works Department	- County Road Relocation	- None
Notes: (1) There are minimal BLM-administered lands associated with the proposed Ripsey Wash TSF. Under the proposed action, the relocation of the Arizona National Scenic Trail (Arizona Trail) would involve BLM-administered lands. A portion of tailings delivery and reclaim water pipelines would cross BLM-administered lands. The Hackberry Gulch TSF alternative would require more extensive use of BLM-administered lands. The quarrying of rock material from federal mineral estate, regardless of surface ownership, requires an approved mineral material sale contract prior to removal (see 43 CFR 3600). (2) San Carlos Irrigation Project is administered by the U.S. Bureau of Indian Affairs. (3) The U.S. Secretary of Agriculture has delegated its administrative responsibility for the Arizona Trail, which is a Congressionally-designated national scenic trail, to the Forest Service, as approximately 73% of the Arizona Trail is located on Forest Service administered lands. The Arizona Trail traverses the area proposed for the Ripsey Wash TSF, but there are no Forest Service administered lands associated with the proposed Ripsey Wash TSF. The Forest Service can coordinate with the Corps, other agencies, including the BLM and Pinal County, and Asarco on relocation options for the Arizona Trail should the Ripsey Wash TSF be selected as the preferred alternative.		

### 3.0 ENVIRONMENTAL PROTECTION AGENCY

EPA has an independent reviewer role for all EIS documents published by federal agencies. In addition, based on its jurisdiction by law and special expertise associated with the Clean Water Act and Clean Air Act, EPA is serving as a cooperating agency with the Corps on the EIS for this project. As such, EPA has provided input into the EIS process.

#### 3.1 CLEAN WATER ACT

The Clean Water Act instituted the following surface water programs:

- The Section 401 certification (see Section 8.3, Water Quality Certification);
- The Section 402 program regulating the point source and stormwater discharge of pollutants, including sediment;
- The Section 303 impaired waters program;
- The Section 404 permit program regulating the discharge of dredged or fill material; and,
- The Section 311 program regulating spills of oil and hazardous substances; and,

EPA established the National Pollutant Discharge Elimination System (NPDES) program for regulating surface water quality. The Federal Water Pollution Control Act Amendments of 1972 and subsequent amendments and re-authorizations principally initiated this program. In its amended and re-authorized form, this statute as a whole is now generally referred to as the Clean Water Act.

Section 402 of the Clean Water Act establishes the NPDES permit program. The Arizona Department of Environmental Quality (DEQ) is the permitting authority in the state of Arizona for the issuance of point source AZPDES (Arizona Pollutant Discharge Elimination System) permits and the stormwater permitting program pursuant to Section 402 of the Clean Water Act.

Section 303 of the Clean Water Act requires the state to develop a list of water bodies that have one or more of the designated beneficial uses that are impaired by pollutants. Specifically, under Section 303(d) of the Clean Water Act, Arizona was required to develop lists of impaired waters, which are waters for which technology-based regulations and other required controls were not stringent enough to meet water quality standards set by Arizona to protect public health or welfare, enhance the quality of water, and serve the purposes of the Clean Water Act. In addition, to comply with the Clean Water Act, Arizona was required to establish priority rankings for waters on the impaired waters list and develop total maximum daily loads (TMDLs) for these impaired waters. A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still safely meet water quality standards. These guidelines are used to derive individual technology-based AZPDES permit limits.

Section 404 of the Clean Water Act authorizes the Corps to issue permits “for the discharge of dredged or fill materials into navigable waters.” These permits are addressed in Section 13.1, U.S. Army Corps of Engineers Responsibilities. The EPA is responsible for reviewing the consistency of any proposed 404 action with Section 404(b)(1) guidelines. In addition, pursuant to Section 401 of the CWA, the State of Arizona must provide certification that any Section 404 permit will not result in a violation of state surface water quality standards.

Section 311 of the Clean Water Act establishes requirements relating to discharges or spills of oil or hazardous substances. Discharges or spills of oil in “harmful quantities” are prohibited. The EPA has established a requirement for the preparation of a spill prevention control and countermeasure (SPCC) plan by facilities that handle substantial quantities of petroleum products.

### **3.2 CLEAN AIR ACT**

In addition to water quality oversight, the EPA also maintains control over the air resources as outlined in the Clean Air Act. The Clean Air Act’s most basic goals are to protect public health and welfare. The EPA can comment on, but is not responsible for an air quality permit in this situation, which would be issued by Pinal County.

## **4.0 BUREAU OF LAND MANAGEMENT**

The Bureau of Land Management (BLM) is serving as a cooperating agency with the Corps on the EIS for this project. As such, the BLM has provided input into the EIS process.

Regarding the construction and operation of the proposed Ripsey Wash tailings storage facility, a segment of the designated tailings and reclaim water pipeline corridor would cross BLM-managed surface, and this activity would require a right-of-way (ROW) approval from the BLM.

Under the proposed action alternative, Asarco’s tailings storage facility would be located on private lands (once acquired from the state of Arizona). As such, the BLM would have no regulatory oversight. However, if any of the alternatives for the tailings storage facility was placed on BLM-managed surface, then the BLM, under the Mining Law of 1872, et. seq., and Sections 302 and 603 of the Federal Land Policy and Management Act of 1976, would have responsibility for the review, approval or denial, and, “if approved”, the monitoring of related land use activities. In this case, Asarco would be required to submit a plan of operation to the BLM that meets the requirements of 43 CFR 3800.

Much of the area proposed for both the Ripsey and Hackberry Gulch TSFs is located as federal mineral estate. Under both the Ripsey Wash and Hackberry Gulch TSF alternatives, Asarco proposed to quarry rock from within the footprint of the proposed tailings starter embankments, as well as to quarry rock

within and adjacent to the tailings facility for use in closure activities. The quarrying of common (non-mineralized) variety rock, even for onsite use, from the federal mineral estate, requires an approved mineral materials sales contract prior to commencing quarrying activities (See 36 CFR 3600). The BLM may not sell quarried rock materials at a price less than fair market value at the time of the sale. To initiate the sales process, Asarco must submit a request for the rock materials as described in 43 CFR §3602.11 and submit mining and reclamation plans as outlined in 43 CFR §3601.40. The sale of mineral materials requires a decision by the BLM authorizing the sale. This EIS document would serve as the NEPA compliance document for any proposed rock material sale. Regulator

## **5.0 BUREAU OF INDIAN AFFAIRS**

The Bureau of Indian Affairs (BIA) is serving as a cooperating agency with the Corps on the EIS for this project. As such, the BIA, through representatives from its San Carlos Irrigation Project (SCIP) has provided input into the EIS process.

SCIP operates and maintains a 69 kV electric transmission line, and a segment of that transmission line crosses through the area designated for the proposed Ripsey Wash tailings storage facility. This portion of the electric transmission line would have to be re-routed around the proposed facility. Asarco would coordinate with SCIP on this re-location, and a new transmission line easement would be required for the relocated routing.

## **6.0 FISH AND WILDLIFE SERVICE**

The U.S. Fish and Wildlife Service has the administrative responsibility for the Endangered Species Act, as re-enacted in 1982. For this tailings storage facility Clean Water Act Section 404 permit, the Corps will consult with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act regarding any federally listed threatened or endangered species that may be impacted by proposed operations. A biological assessment (BA) will be prepared for any federally listed threatened or endangered species, and this document will be submitted to the U.S. Fish and Wildlife Service in support of the consultation process. If adverse impacts to threatened or endangered species are projected, specific design measures to protect the affected species may need to be developed.

The U.S. Fish and Wildlife Service also administers the Federal Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

## **7.0 ADVISORY COUNCIL ON HISTORIC PRESERVATION**

A copy of both the draft EIS and final EIS documents must be filed with the Advisory Council on Historic Preservation. This agency works in an advisory role to assist the Corps with compliance with the National Historic Preservation Act and the American Indian Religious Freedom Act. In addition, the Arizona State Historic Preservation Office (SHPO) will consult with the Corps under Section 106 of the National Historic Preservation Act on any impacts to cultural resources. The Advisory Council on Historic Preservation would be available to serve in an advisory role if requested by the SHPO. The Advisory Council on Historic Preservation may also review state program activities and determine relative compliance to the previously mentioned National Historic Preservation Act.

## **8.0 U.S. MINE SAFETY AND HEALTH ADMINISTRATION**

Because the proposed tailings storage facility would become part of the Ray Mine, the health and safety aspects of the operation of that facility would be regulated by federal health and safety standards for mining operations. The U.S. Mine Safety and Health Administration (MSHA) would make routine inspections of the operation and would be involved in education and safety training programs for Asarco personnel. Asarco would be responsible for providing MSHA with reports of accidents, injuries, occupational diseases, and related data. Specific programs for the education and training of Asarco employees are also under MSHA regulatory responsibilities.

## **9.0 ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY**

The Arizona Department of Environmental Quality (DEQ) is responsible for protecting the environmental quality of the State of Arizona and has oversight responsibility for several permits that would be required for the proposed Ripsey Wash tailings storage facility. These include:

- Aquifer Protection Program (includes facility closure plan)
- Water Quality Certification of Corps Section 404 permit
- Stormwater Permit

### **9.1 AQUIFER PROTECTION PERMIT**

The Arizona DEQ requires an operator of a mine tailings storage facility to obtain an Aquifer Protection Program (APP) permit. This permit is required if the proposed facility has the possibility to discharge directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that a pollutant could reach an underlying aquifer. The project proponent for an APP must demonstrate that Best Available Demonstrated Control Technology (BADCT) will be utilized to prevent or reduce the discharge of pollutants to the aquifer and that aquifer quality standards will not be exceeded at the point of compliance (or that existing water quality will not worsen if standards are already exceeded at the point of compliance at the time of permit issuance). The APP also requires that the project proponent has the financial and technical capabilities to comply with the permit.

### **9.2 FACILITY CLOSURE PLAN**

The Arizona DEQ requires a closure plan (or strategy) for a tailings storage facility and its supporting infrastructure. The Arizona DEQ must approve the closure plan (or strategy) prior to the issuance of an APP for the facility.

### **9.3 WATER QUALITY CERTIFICATION**

The Arizona DEQ is responsible for issuing a Section 401 water quality certification to ensure federally permitted or licensed activities do not cause a violation of state water quality standards when that activity may result in a discharge to surface waters regulated by the Clean Water Act. In the case of the proposed Ripsey Wash tailings storage facility, the federal permit would be a Section 404 permit from the Corps. The Arizona DEQ may also review the federal action for consistency with state-adopted plans and rules.

### **9.4 INDUSTRIAL STORMWATER PERMIT**

Industrial activities (such as a tailings storage facility) with stormwater discharges are required to obtain an Arizona Pollutant Discharge Elimination System (AZPDES) 402 permit from the Arizona DEQ. Stormwater discharge means the discharge from any conveyance that is used for collecting and



conveying stormwater that is directly related to the manufacturing, processing or raw material storage areas at an industrial site, such as a mining operation.

## **10.0 ARIZONA STATE MINE INSPECTOR**

The Arizona State Mine Inspector requires a reclamation plan for mining activities with surface disturbances on private lands greater than five acres. Reclamation plans must identify the proposed post-project land use and the measures necessary to achieve that use. The Arizona State Mine Inspector also requires a financial assurance based on the actual estimated costs of reclamation. Financial assurances can be provided in any one of several forms, including surety bond, certificate of deposit, cash deposit, and/or corporate guarantee.

## **11.0 ARIZONA DEPARTMENT OF WATER RESOURCES**

The Arizona DWR administers four categories of water supplies available in Arizona:

- (1) Colorado River water (administered under the Central Arizona Project, also known as CAP);
- (2) Surface water from lakes, rivers, stream and springs as well as storage reservoirs and delivery systems;
- (3) Groundwater from wells; and,
- (4) Reclaimed water or effluent water.

The Department of Interior oversees deliveries of Central Arizona Project water; ADWR acts to protect Arizona's allocation of Colorado River Water but distribution of this water is under federal oversight.

Surface water is administered under the doctrine of prior appropriation, also known as "first in time, first in right", meaning the person who first puts the water to a beneficial use acquires a right that is better than later appropriators of the water.

Groundwater is subject to the beneficial use doctrine. In 1980, the Arizona Legislature enacted the Groundwater Management Act to control severe groundwater depletion and to provide the means for allocating limited groundwater resources to meet Arizona water needs. Five active management areas were created near populated areas in the state, in addition to seven planning areas. The proposed Ripsey Wash and/or Hackberry Gulch project sites are not located within an active management area.

Asarco's right to use Gila River water is governed by the Globe Equity Decree. The United States District Court for the District of Arizona entered a decree in *United States v. Gila Valley Irrigation District*, Globe Equity No. 59 (Decree) on June 29, 1935 embodying a settlement reached among numerous claimants to water in the Gila River. The Decree controls the use of the mainstem of the Gila River within its designated reach.

Article IX of the Decree recognizes the right of ASARCO, as a successor in to Kennecott Copper Corporation, to divert up to 16,221 acre-feet per year of the natural flow of the Gila River for industrial, municipal, domestic and related purposes at a rate not to exceed 10,000 gallons per minute. This water is to be diverted by means of wells located in ASARCO's Hayden well field. Article IX authorizes Asarco to divert its entitlement in disregard of the senior water rights of the United States held for the benefit of the Gila River Indian Community and the San Carlos Irrigation and Drainage District. The lands within the Gila River Indian Reservation and the San Carlos Irrigation and Drainage District entitled to be irrigated pursuant to the Decree are served by the San Carlos Irrigation Project, a federal reclamation project.

## **12.0 ARIZONA STATE HISTORIC PRESERVATION OFFICE**

The Arizona State Historic Preservation Office (SHPO) must be consulted when projects are subject to review under Section 106 of the National Historic Preservation Act of 1966. This act requires that all federal agencies take into account the effect of their actions on historic properties. The Arizona State Historic Preservation Office should be consulted to determine if the site has been surveyed, if there are identified historic resources on site, and if the property is listed or eligible for listing on the National Register of Historic Places. If the project will adversely affect property that meets the National Historic Register criteria, the Arizona State Historic Preservation Office will recommend ways to avoid or mitigate adverse effects.

## **13.0 PINAL COUNTY**

With regards to Asarco's proposed plans for the tailings storage facility, Pinal County has regulatory requirements for air quality, open space and trails, and county roads.

### **13.1 AIR QUALITY CONTROL DISTRICT**

The Pinal County Air Quality Control District has permit review and approval authority for any operation of a source, such as an existing mining operation, that produces one ton or more of regulated pollutants on a continuous basis for a full year. Pinal County has an air quality program approval and/or delegation from the EPA to administer several programs under the Clean Air Act, including authority to issue major and minor New Source Review (NSR) permits, issue Title V permits, and administer EPA's New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) and Maximum Achievable Control Technology (MACT) standards.

### **13.2 OPEN SPACE AND TRAILS ADVISORY COMMISSION**

The Pinal County Board of Supervisors have established an Open Space and Trails Advisory Commission that acts as a recommending body to the Supervisors on issues related to open space, trails and regional parks. This will include any action on the possible relocation or realignment of the Arizona National Scenic Trail (ANST) in the Ripsey Wash area.

### **13.3 PUBLIC WORKS DEPARTMENT**

The Pinal County Public Works Department is responsible for county road design, construction, and maintenance. This agency must review and approve the design for any re-routing of the Florence-Kelvin highway, which would be necessary if Asarco is allowed to construct and operate the proposed Ripsey Wash tailings storage facility. The Pinal County Public Works Department also is responsible for maintenance on the Florence-Kelvin highway.